

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: ASBESTOS PRODUCTS
LIABILITY LITIGATION**

MDL DOCKET NO. 875

This Document Relates To:

**ROBERT D. BELUE, ET AL. vs.
A.O SMITH ELECTRICAL
PRODUCTS COMPANY, ET AL.**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

ROBERT D. BELUE, et al.,

Plaintiffs,

v.

ASBESTOS DEFENDANTS, et al.,

Defendants.

Civil Action No.

2:06-CV-1034-WKW

**DEFENDANT IMO INDUSTRIES, INC.'S
MOTION TO DISMISS**

Defendant IMO Industries, Inc. (IMO) pursuant to Rule 12(b)(4) and Rule 12(b)(5), Federal Rules of Civil Procedure, moves the Court to dismiss this case, and all claims asserted by plaintiffs, separately and severally, against it. As grounds for this motion, IMO states as follows:

1. The Complaint in this case was filed on November 17, 2006.
2. On January 23, 2008, plaintiffs served IMO, **432 days** after the Complaint was

originally filed.

3. Plaintiffs failed to serve IMO within 120 days of the filing of the Complaint as required by Rule 4(m), Federal Rules of Civil Procedure. Accordingly, under Rule 4(m), this action should be dismissed without prejudice against IMO.

4. IMO reserves all defenses it may have in this case.

WHEREFORE, IMO moves this Court to dismiss this case, and all claims asserted therein, against it.

s/Frederick G. Helmsing, Jr.

Brian P. McCarthy

Frederick G. Helmsing, Jr.

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CERTIFICATE OF SERVICE

This is to certify that on this 12th day of February, 2008, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Middle District of Alabama using the CM/ECF system which provided electronic notice to all counsel of record of same.

s/Frederick G. Helmsing, Jr.